**THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU**

**WRIT PETITION No.28593 of 1996**

**Date: 15-09-2005**

Between:

1. V.J.P.Gupta, S/o late Kameswara Rao Gupta, aged 54 years, Business, Kakinada, East Godavari District and another

**…Petitioners**

**a n d**

1. The State of A.P. rep. By its Secretary and others

**…Respondents**

**THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU**

**WRIT PETITION No.28593 of 1996**

**ORAL ORDER:**

Questioning the proceedings in Lr.No.AAO/ERO/KDA/JDA-3/BS1/D.No.1130/96 dated 02-05-1996 issued by the respondents demanding Rs.26,142-90ps towards short fall in the Bi-monthly bill for Electricity, petitioners filed this petition.

2. The case of the petitioners is that when they and others carried on business in partnership, service connection for power supply was obtained in the name of 1st petitioner, and after the dissolution of that firm in December, 1989, second petitioner is carrying on his business in the premises in which the firm carried on the business, continuing the service connection to the premises in the name of first petitioner and when a bill No.R30056 was served on the second petitioner demanding consumption charges, which included Rs.26,142-90ps under a cryptic heading 'SF amount' from 5/87 to 8/88, he sought a clarification for that demand for which 5th respondent sent a reply informing that inasmuch as the audit and inspection report, for the period from May 1987 to August 1988, showed that the meter was not functioning properly that short fall also is included in the bill served on the second petitioner. The assumption on the part of respondents that the meter is not functioning properly is not correct, and so inclusion of Rs.26,142-90ps towards short fall of the consumption charges from May 1987 to August 1988 is arbitrary and is liable to be quashed.

3. No counter is filed on behalf of the respondents though the writ petition was filed in 1996.

4. Heard the learned counsel for petitioners.

5. No representation on behalf of respondents.

6. In pursuance of a letter requesting clarification, respondents through the letter dated 02-04-1996 informed that the Assistant Engineer, Kakinada, while taking the meter reading on
23-06-1987, observed that the meter was not working properly and recommended for average billing, and the audit party also found that consumption for May 1987 also was low and so it was felt that the meter was defective from May 1987 onwards and since bills were being issued for the recorded consumption of the defective meter, revised bill for the period May 1987 to August 1988, as per the average worked out on the basis of the consumption from February 1987 to April 1987, was

worked out as Rs.26,142-90ps.

7. If the meter was defective, respondents should and would have changed the meter. No notice seems to have been given to the petitioners about the meter being defective or as to how they came to a conclusion that the meter is defective. No document is placed on record by the respondents to show that the meter in the premises of the petitioners was found defective after its being tested by the concerned authorities.

8. Respondents demanding Rs.26,142-90ps from the petitioners without producing any prima facie evidence to show that there was a defect in the meter is but arbitrary. This apart even according to the reply sent by the respondents the alleged defect in the meter was found in 1987. So, respondents have to explain the reasons for their sleeping over the matter for such a long time till 1995 and without doing so they cannot unilaterally claim the charges from May 1987 to August 1988 in 1995.

9 . For the above reasons, the petition is allowed with costs. Rule Nisi is made absolute and the demand for payment of Rs.26,142-90ps made in Bill No.R/30056 dated 01-12-1995 towards short fall for the period from May 1987 to August 1988 is quashed.

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(C.Y.Somayajulu, J.)

Date: 15-09-2005

Cvrk